IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1134 OF 2004

Shri Genba Sahadu Modak and Ors. ..Appellants

versus

Shri Suryakant Vithal Modak & Ors. ..Respondents

Mr.Anilkumar Sawant i/b A.V.Anturkar for appellants

Mr.S.B.Shetye i/b Ms. Revati Mohite for Respondents

WITH

SECOND APPEAL NO.1135 OF 2004

Shri Genba Sahadu Modak and Ors. ..Appellants

Versus

Shri Suryakant Vithal Modak and Ors. ..Respondents

Mr.Anilkumar Sawant i/b A.V.Anturkar for appellants

Mr.S.B.Shetye i/b Ms. Revati Mohite for respondents

CORAM : P.V.KAKADE,J.

DATE : 1st DECEMBER, 2004

P.C.:

1. Both these appeals can be conveniently disposed of, as they involved same parties and are relating to two different lands involved in the dispute held by the same parties.

2. In Second Appeal No.1134 of 2004 the suit for partition was decreed by the Lower Court in favour of the Plaintiffs. However, the Lower Appellate Court allowed the appeal and dismissed the suit of the plaintiffs. Similarly in Second Appeal No.1135 of 2004 the suit for partition of the plaintiffs was decreed and appeal against the said decree passed by the lower court was also dismissed.

3. I heard the learned counsel for both the parties. The learned counsel for the appellants sought to raise only one point in both the matters to the effect that the Lower Appellate Court did not comply with the mandatory provision of Order 41 Rule 31 of Civil Procedure Code by raising proper points for consideration while adjudicating the appeals and hence

the Judgment of the Lower Appellate Court in both the matters were required to be quashed. This is the only substantial question of law sought to be raised on behalf of the appellants.

4. Now perusal of the judgment of the Lower Appellate Court in both the appeals shows that the Lower Appellate Court has framed point for determination as follows :

POINTS:	FINDINGS:
(a) Whether the judgment and decree passed by the trial court is legal, proper and correct?	Yes.
(b) What Order?	Appeal dismissed with costs Or Appeal allowed with costs.

5. Rule 31 of Order 41 stipulates as under :

> **Contents, date signature of judgment** . - The Judgment of the Appellate Court shall be in writing and shall state -
>
> a) the points for determination;
> b) the decision thereon;
> c) the reasons for the decision; and
> d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;
>
> and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

Therefore, on the basis of this provision, the appellants sought to rely upon two judgments of our High Court. In the case of Smt.Anita M.Barreto vs. Abdul Wahid Sanaullah - AIR 1985 BOMBAY 98, the single judge of this Court has observed that Order 41, Rule 31 deals with the judgment of the Appeal Court and it says amongst other things that the judgment shall state the points for determination. When a requirement such as this is insisted upon by the procedural law of the land,

one must try to understand the object and scope of this provision. Merely asking the question as to whether the judgment of the Court below is correct, legal or valid is hopelessly and inadequate method of meeting the requirement of this legal provision. If such practices is adhered to it amounts to excluding provision of Order 41 Rule 31(a) because asking such vague questions as mentioned above will not lead to the pronouncement of a well considered and reasoned judgment. Similarly in another ruling of this Court in the case of Janardan Nago Patil vs. Ramanand Ramdas Mishra - 2003(4) Mh.L.J. 853 the single Judge of this Court has followed the earlier ruling in Anita Baretto case (supra) and has held that the First Appellate Court is final court of facts and must frame proper points for determination but, only framed a single point as to whether the trial court had rightly dismissed the suit and therefore, it was against the procedural law and held that such order deserved to be set aside and the matter was remanded with direction to frame proper points for determination and record its findings on each of the points urged before it.

. Now, in the light of these two rulings of this

court, it is to be noted that similar situation has arisen in the present case in the sense that lower appellate court judge in both the appeals has framed a point to the effect that whether the judgment and decree passed by the trial court is legal, proper and correct and therefore, on the face of it, it appears that it is vague and proper points on each issue is not raised and answered. At the same time, it must be noted that perusal of the entire judgment of the lower appellate court in both the appeals leaves no doubt whatsoever that he has referred to each fact and piece of evidence involved in the case and has taken each disputed aspect for consideration, discussed it, and has answered it accordingly. In other words, no doubt that the technical compliance that the provision of Order 41 Rule 31 is not made, however it is quite clear that no prejudice will be caused to either of the parties because body of the judgment of the lower appellate court is clear enough to show how each and every issue involved in the dispute was dealt with, and in my considered view, legally and correctly. This was not the case either in Anita Baretto case (supra) or Janardan Nago Patil (supra) wherein it was observed that perusal of the judgment made it clear that the first

appellate court had not applied its mind to the points urged before it and had not recorded its decision on the facts urged before it. This is not the case in the present appeals. On the other hand, it is seen that the lower appellate court judge has not only taken up each and every issue in dispute for discussion but has appreciated it properly which leaves no doubt that he has applied his mind to the facts and legal aspects involved in the case and therefore, I am inclined to hold that no prejudice will be caused to the appellants and on that count the order of the lower appellate court judge need not and cannot be set aside only because technical compliance with the provision of Order 41 Rule 31 of C.P.C. is not made. In other words, in the present case, non compliance with the said provision, in the light of aforesaid aspects, would amount to mere irregularity.

. Except for this point no other substantial question of law is admittedly involved in these appeals. In view of this position I have no doubt whatsoever that there is no substance in both these appeals and therefore, they deserves to be dismissed in limine and stands dismissed with no order as to costs.

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